

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA

In re

Case No. 98-2104-DHW
Chapter 7

ROBERT LEE GILLETTE
DIANNA LYNNE GILLETTE,

Debtor.

ROBERT LEE GILLETTE,

Plaintiff,

v.

Adv. Proc. No. 02-8016-DHW

UNITED STATES OF AMERICA,
DEPARTMENT OF EDUCATION,

Defendant.

MEMORANDUM OPINION

Robert Gillette commenced this adversary proceeding on April 18, 2002 under 11 U.S.C. § 523(a)(8)(A) to determine the dischargeability of eleven educational loans incurred between 1979 and 1987.¹

The proceeding came on for trial on March 4, 2003. The debtor and his wife testified on the debtor's behalf. Both the government and the debtor submitted documentary evidence. The court finds the following facts.

¹ The court has jurisdiction of this proceeding under 28 U.S.C. § 1334(b). Further, this is a core proceeding in which the court has jurisdiction to enter a final judgment. 28 U.S.C. § 157 (b)(2)(I).

Facts

The debtor incurred eleven educational loans from 1979 to 1987 for the purpose of undergraduate and post-graduate work.² For reference, the parties divided the loans into three basic groups in reverse chronological order.³

| <u>Loan Numbers</u> | <u>Dates Incurred</u> | <u>Reason for Loans</u> |
|---------------------|-----------------------|--|
| 9-12 | 1979-1981 | Undergraduate |
| 6-7 | 1983 | Preparatory Courses for Veterinary School |
| 1-5 | 1984-1987 | Veterinary School |

The parties do not dispute that the first installment under each loan was due twelve months after the debtor either left school or ceased to carry at least one-half the normal academic workload.⁴

The debtor first left school in December 1982 and remained out of school until September 1983 when he enrolled in courses preparatory for veterinary school.⁵ He commenced veterinary school in September 1984

² The debtor does not dispute the amount of the indebtedness. As of July 2002, the loans had a balance of \$49,356.91.

³ The loans were divided according to lenders and guaranty programs. Loans 1-5 were guaranteed by Sallie Mae; Loans 6-12 were guaranteed by the Foundation for Educational Funding. Loan 8 has been paid and it not at issue in this proceeding.

⁴ The government submitted all of the promissory notes except one. The grace period for Loans 1-3 is not indicated on the promissory notes in evidence, but the repayment records reflect that the government actually applied a 12-month grace period to those loans.

⁵ The debtor graduated from college in May 1982. The debtor testified that he attended respiratory therapy school from June 1982 until December 1982. The debtor's wife testified that he did not start respiratory therapy school until the fall of 1982 and

and graduated at the end of May 1988. From September 1977 to May 1988, the debtor was out of school for only 8 months: January through August 1983.

After an unsuccessful attempt to practice veterinary medicine, the debtor filed a chapter 7 petition in Kansas on January 13, 1992. The debtor received a discharge on September 24, 1992. The debtor then moved to Alabama and obtained employment at Auburn University.

From August 1989 through March 1993, the debtor made numerous requests to the government for suspension of his obligation to repay the student loans. The government provided proof of eight suspensions granted at the debtor's request.

The debtor filed the instant chapter 7 petition on April 29, 1998 and received a discharge on September 3, 1998. After the government recommenced collection of the student loans, the debtor reopened the bankruptcy case to file the instant adversary proceeding.

Conclusions of Law

11 U.S.C. § 523(a)(8)(A) renders a federally guaranteed educational loan dischargeable if the loan "first became due before more than 7 years (exclusive of any applicable suspension of the repayment period) before the date of the filing of the petition."⁶

attended for only 4 months. The court will accept the testimony of the debtor.

⁶ The debtor does not contend that the educational loans are dischargeable under 11 U.S.C. § 523(a)(8)(B) as imposing an "undue hardship." When the debtor filed the chapter 7 petition on April 29, 1998, section 523(a)(8)(A) provided as follows: "A discharge under section 727 . . . of this title does not discharge an individual debtor from any debt—"

(8) for an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit

All eleven loans were incurred more than 7 years before the filing of the chapter 7 petition on April 29, 1998. The issue is whether the loans were actually in repayment for more than 7 years due to suspensions of the repayment period.

In order to resolve that issue, the court must determine when the loans first became due (i.e., when the repayment period commenced for each loan). An educational loan first becomes due when the first installment under the loan is due. *Woodcock v. Chemical Bank (In re Woodcock)*, 45 F.3d 363 (10th Cir. 1995). As stated above, the parties do not dispute that the first installment was due twelve months after the debtor either left school or ceased to carry at least one-half the normal academic workload.

Therefore, loans 1-5 and loans 6-7 first became due on June 1, 1989, twelve months after the debtor left veterinary school. However, loans 9-12 first became due on October 1, 1988, four months after the debtor left veterinary school. The twelve-month grace period for loans 9-12 ran for 8 months during 1983 when the debtor was out of school.

The court must next determine the time periods during which repayment of the loans was suspended. The repayment records submitted by the government reflect the suspensions applied by the government to the various loans. The suspensions are corroborated by the debtor's deferment requests of record.⁷ The parties agree that repayment of all

institution, or for an obligation to repay funds received as an educational benefit, scholarship, or stipend, unless—

(A) such loan, benefit, scholarship, or stipend overpayment first became due before more than 7 years (exclusive of any applicable suspension of the repayment period) before the date of the filing of the petition.

⁷ The debtor argued at trial that at least one of the deferments was granted more than 6 months retroactively contrary to the provisions of the deferment agreement. However, the debtor has not argued that the deferment was not in fact granted. The

eleven loans was suspended from January 13, 1992 through September 24, 1992 during the pendency of the debtor's prior chapter 7 bankruptcy case. The following chart reflects the suspension periods applicable to the eleven loans:⁸

| Loan Nos. | Suspension Periods | Months Suspended | Total Months Suspended |
|------------|--------------------|------------------|------------------------|
| Loans 9-12 | 8/01/89 - 7/31/91 | 24 | 38½ |
| | 1/13/92 - 9/24/92 | 8½ | |
| | 9/25/92 - 3/25/93 | 6 | |
| Loans 6-7 | 3/28/89 - 7/28/89 | 4 | 40½ |
| | 8/01/89 - 7/31/90 | 12 | |
| | 8/01/90 - 7/01/91 | 11 | |
| | 7/28/91 - 12/28/91 | 5 | |
| | 1/13/92 - 9/24/92 | 8½ | |
| Loans 1-5 | 6/27/89 - 10/18/91 | 27⅔ | 39 |
| | 10/18/91 - 1/13/92 | 3 | |
| | 1/13/92 - 9/24/92 | 8½ | |

In summary, loans 9-12 first became due on October 1, 1988, 115 months before the debtor filed the instant chapter 7 petition. The loans were in suspension for 38½ months, leaving 76½ months during which the loans were in repayment.

Loans 6-7 first became due on June 1, 1989, 107 months before the debtor filed the instant chapter 7 petition. The loans were in suspension for 40½ months, leaving 66½ months during which the loans were in repayment.

debtor, having requested and received the deferment, cannot now be heard to argue that the deferment was invalid.

⁸ The number of months are approximated for convenience.

Loans 1-5 first became due on June 1, 1989, 107 months before the debtor filed the instant chapter 7 petition. The loans were in suspension for 39 months, leaving 68 months during which the loans were in repayment.

None of the loans were in repayment for more than 7 years, or more than 84 months, before the chapter 7 petition was filed. Therefore, the loans are nondischargeable under 11 U.S.C. § 523(a)(8)(A).⁹

A separate order will enter consonant with this memorandum.

Done this 24th day of June, 2003.

/s/ Dwight H. Williams, Jr.
United States Bankruptcy Judge

c: James E. Cox, Attorney for Debtor
Patricia Allen Conover, Attorney for Defendant

⁹ The debtor's primary arguments at trial were two-fold: (1) the government misapplied a request for deferment for one group of loans to all eleven loans; (2) the government miscalculated the number of months the loans were in deferment by counting partial months as full months. However, the government did not misapply the deferment in question: the government applied the deferment to only one group of loans. In addition, the court has recalculated the number of months the loans were in deferment with more accuracy. However, the court reaches the same ultimate conclusion as the government. The debtor did not otherwise rebut or refute the repayment records (containing the suspensions applied) submitted by the government.

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Defendant.

FINAL JUDGMENT

In accordance with the Memorandum Opinion entered this day, it is hereby

ORDERED that the educational loans referenced by the complaint and owed by Robert Lee Gillette to the United States of America are hereby declared NONDISCHARGEABLE under 11 U.S.C. § 523(a)(8).

Done this 24th day of June, 2003.

/s/ Dwight H. Williams, Jr.
United States Bankruptcy Judge

c: James E. Cox, Attorney for Debtor
Patricia Allen Conover, Attorney for Defendant